

IN THE INCOME TAX APPELLATE TRIBUNAL
“C” BENCH, MUMBAI
BEFORE SHRI BASKARAN BR, ACCOUNTANT MEMBER &
SHRI PAVAN KUMAR GADALE, JUDICIAL MEMBER

ITA No. 921/Mum/2020

(A.Y: 2015-16)

M/s Cyber Infosystem and Technologies Pvt Ltd,396, Kamath Industrial Estate, Veer Savarkar Marg, Prabhadevi, Mumbai – 400025.	Vs.	DCIT, CC-5(3) R.No. 1906, 19 th Floor, Air India Bldg, Nariman Point, Mumbai – 400021.
स्थायी लेखा सं./जीआइआर सं./PAN/GIR No. : AABCC2176K		
Appellant	..	Respondent

Appellant by :	Mr.Priyavart Gupta.AR
Respondent by :	Ms.Deepika Arora.DR

Date of Hearing	22.11.2022
Date of Pronouncement	28.11.2022

आदेश / O R D E R

PER PAVAN KUMAR GADALE JM:

The assessee has filed the appeal against the order of the Commissioner of Income Tax (Appeals)(CIT(A))-53, Mumbai passed u/s 250 of the Act. The assessee has raised the following grounds of appeal:

1) That, the notice issued under section 271(1)(c) read with section 274 of the Act and the order passed under section 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

2) That the learned CIT(A), on the facts and circumstances of the Appellant's case and in law, has erred in upholding the levy penalty of Rs.53,00,000 under section 271(1)(c) of Income Tax Act, 1961 for concealment of income on estimated assessed income of Rs.1,68,00,000 being sum of 2% of trading turnover of Rs.64.31 crores and 10% of rent and service charges of Rs.3.94 crores.

3) a) That the Learned CIT(A) has grossly erred on facts and in law in passing the order dated 26.11.2019 without giving sufficient and reasonable opportunity to the Appellant to be heard after rejecting Appellants request to keep penalty proceedings in abeyance till receipt of order of Hon'ble ITAT in quantum proceedings. The order has been passed in violation of principles of natural justice.

b) That the Learned CIT(A) has grossly erred in upholding the order passed by Learned Assessing Officer u/s. 271(1)(c) of the I. T. Act, 1961 without giving sufficient and reasonable opportunity to the Appellant to be heard after rejecting Appellants request to keep penalty proceedings in abeyance till receipt of order of Hon'ble ITAT in quantum proceedings. The order has been passed in violation of principles of natural justice.

4) That the Learned CIT(A) and AO, has erred in levying penalty on facts and in law, without waiting for the order of the Hon'ble ITAT in quantum proceedings.

5) That improper and invalid satisfaction has been recorded while completing the assessment proceeding

hence the notice issued under section 274 of the Act, is illegal, bad in law and without jurisdiction.

6) That the Penalty has been initiated vide notice under section 271(1)(c) read with section 274 of the Act, without any specific charge and not consistent with satisfaction, hence, the said notice and the order passed under section 271(1)(c) of the Act are illegal, bad in law and without jurisdiction.

7) All of the above grounds of appeal are without prejudice and are mutually exclusive to each other.

8) The Appellant craves leave to add, amend, alter and/or delete any of the above grounds of appeal at or before the time of hearing.

2. The brief facts of the case are that the assessee company is engaged in the business of software and info systems. The assessee has filed the return of income electronically for the A.Y 2015-16 on 30.09.2015 disclosing a total income of Rs.5,71,710/- Subsequently the case was selected for scrutiny under the CASS as the assessee has disclosed low net profit as against the large gross receipts and also mismatch in sales turnover reported by Audit report and ITR. Accordingly notice u/s 143(2) and 142(1) of the Act was issued calling for the various details, whereas the Assessing Officer (AO) found that the details called for were not furnished and the notices were remain

unclaimed as per the postal authorities. Hence the AO on perusal of the facts and the information available on record has applied the Best judgment assessment u/s 144 of the Act and observed that the assessee has obtained unsecured loans and the notice was issued to the directors and shareholders to substantiate with the evidences and no compliance and hence made the addition and assessed the total income and observed at page 2 Para4 to 6 of the order read as under:

4. Further Notice u/s 142(1) of the Act was issued to the Directors of the company Mr. Narayan Ghumatkar and Mr. Akshay Patil and shareholders of the company M/s. Cumballa Hill Property Developers Pvt Ltd. Mr. Gaurav Tayal, M/s. Ahmednagar Investment P. Ltd., M/s. Cyber Zeeboomba Com P. Ltd., and M/s. 21st Century Entertainment Pvt. Ltd. Notices sent to the assessee company and Directors of the Company were served and the same are placed on record alongwith postal acknowledgements, the details of the same could not be mentioned for the reason that date of receipt has not been mentioned by the receiver. Further, in order to ensure that the ends of justice are met and the established judicial rule of audi altram partem i.e., opportunity of being heard were also afforded to the assessee company, notice u/s 142(1) dated 04.12.2017 fixing the date of hearing on 12.12.2017 was also issued to the shareholders of the assessee company M/s. Cumballa Hill Property P Ltd., Mr. Gaurav Tayal, M/s. 21st Century Entertainment P Ltd., M/s. Cyber Zeeboomba Com P Ltd., and M/s. Ahmednagar investments P Ltd., and Directors of the

assessee company Shri Akshay Patil and Shri Narayan Ghumatkar. These notices highlighted the complete details of opportunities of being heard that were afforded to the assessee company but not availed by the assessee company or its Directors were also clearly mentioned. Further the Notice u/s 142(1) sent to the Directors/Shareholders Shri Akshay Patil, Mr. Gaurav Tayal, M/s. Cyber Zeeboomba Com Pvt. Ltd., were returned unserved. Over and above, this office also took different addresses from the data in the ITD system to convey the assessee company/its Directors/Shareholders about the ongoing assessment proceedings and accordingly notices were also issued to such different addresses which has been mentioned elsewhere in this and previous paragraph(s).

5. As can be seen from the above, neither the assessee company, its Directors nor the shareholders of the assessee company inspite of being afforded numerous opportunities of being heard chose not to respond to any of the statutory notices u/s 142(1) issued by this office. It can be seen from records that no adjournments were also sought by the assessee company/its Directors or the shareholders of the assessee company.

6. Considering the above facts of the assessee's case and information available on record, the total income of the assessee is assessed at Rs. 6,50,00,000/- being net of losses of current assessment year and of all the earlier years put together and the unexplained sources of shareholders funds, unsecured loans, creditors etc. Penalty proceedings u/s 271(1)(c) of the Income Tax..ct for concealment of income is initiated in this case.

3. Finally the AO has passed the order u/s 144 of the Act determining the total income of Rs. 6,50,00,000/- vide order dated 18.12.2017.

4. Subsequently, the AO has initiated penalty proceedings and issued notice for filling the explanations, since the assessee has failed to furnish satisfactory explanations and was non cooperative in compliance to notices in the Assessement proceedings and penalty proceedings, the A.O. has dealt on the provisions and facts has levied the penalty u/s 271(1)(c) of the Act of Rs.53,00,000/- vide order dated 20.03.2019.

5. Aggrieved by the penalty order the assessee has filed an appeal before the CIT(A), whereas the CIT(A) in the course of hearing proceedings found that against the quantum additions the assessee has filed an appeal before the CIT(A) against the order u/s 144 of the Act where the total income was determined at Rs.6,50,00,000/-. Whereas the CIT(A) has considered the facts and information and partly allowed the appeal and sustained the addition to the extent of Rs. 1,68,00,000/-. In the penalty appeal, the CIT(A) has

considered these facts at Para 6 of appellate order. Finally the CIT(A) was not satisfied with the explanations and observed that the assessee has failed to respond to the penalty notice and there was no explanations were filed and failed to furnish the information and upheld the penalty order and dismissed the assessee appeal. Aggrieved by the CIT(A) order, the assessee has filed an appeal before the Hon'ble Tribunal.

6. At the time of hearing Ld. AR submitted that the CIT(A) erred in confirming the penalty irrespective of the fact that the assessee has filed an appeal against the CIT(A) order sustaining the partial quantum addition before the Hon'ble Tribunal. Further the Ld. AR submitted that the Hon'ble Tribunal has restored the matter to the file of the assessing officer with specific directions and produced the copy of the ITAT order and prayed for allowing the assessee appeal. Contra, the Ld. DR supported the order of the CIT(A).

7. We have heard the rival submissions and perused the material on record. The sole grievance of the assessee that the CIT(A) has sustained the penalty

levied by the AO overlooking various factual aspects and the provisions of law. The Ld.AR has drawn attention to the findings of the Hon'ble Tribunal in restoring the quantum appeal disputes to the file of the Assessing officer. At this juncture, we consider it appropriate to refer to the findings of the Hon'ble Tribunal observed at page 3 Para 4 and 5 of the order read as under:

4. We find that there was absolutely no representation made by the assessee before both the lower authorities. In our considered opinion, the manner of determination of total income adopted by the ld. AO as well as by the ld. CIT(A) cannot be accepted as they are without any basis. At the same time, the assessee's non-co-operation before both the lower authorities cannot be ignored. Even before us, despite the notice being served on the assessee company, there was no appearance from the side of the assessee. However, in the interest of justice and fair play, we deem it fit and appropriate to restore these appeals to the file of the ld. AO for denovo adjudication in accordance with law. Needless to mention that assessee be given reasonable opportunity of being heard. The assessee is hereby directed to provide all the necessary details with supporting evidences in support of its return before the ld. AO and also furnish the necessary details as called for by the ld. AO from time to time in the set aside proceedings. The assessee is also directed to co-operate with the ld. AO for expeditious completion of the set aside assessment proceedings. Accordingly, the grounds raised by the assessee as well as by the

Revenue are allowed for statistical purposes in terms of aforesaid observations.

5. In the result, appeals filed by the assessee and Revenue are allowed for statistical purposes.

8. We Considering the facts, circumstances and decision of the Honble Tribunal in restoring the issues to the file of the Assessing officer for denovo adjudication in accordance with the Law, since this penalty order does not have legs to stand on its own. Accordingly, the penalty levied by the Assessing Officer does not sustain and we set-aside the order of the CIT(A) and the A.O. is at liberty to decide on the question of levying of penalty in the set-aside proceedings and we allow the grounds of appeal in favour of the assessee.

9. In the result, the appeal filed by the assessee is allowed.

Order pronounced in the open court on 28.11.2022.

Sd/-
(BASKARAN BR)
ACCOUNTANT MEMBER

Sd/-
(PAVAN KUMAR GADALE)
JUDICIAL MEMBER

Mumbai, Dated 28.11.2022

KRK, PS

आदेश की प्रतिलिपि अग्रेषित/Copy of the Order forwarded to :

1. अपीलार्थी / The Appellant
2. प्रत्यर्थी / The Respondent.
3. संबंधित आयकर आयुक्त / The CIT(A)
4. आयकर आयुक्त(अपील) / Concerned CIT
5. विभागीय प्रतिनिधि, आयकर अपीलीय अधिकरण, अहमदाबाद / DR, ITAT, Mumbai
6. गार्ड फाईल / Guard file.

आदेशानुसार/ BY ORDER,

सत्यापित प्रति //True Copy//

1.

(Asst. Registrar)
ITAT, Mumbai